

# FIDUCIARY FOREIGN TRUST COMPANY REQUIREMENTS

## MONTANA CODE ANNOTATED (MCA) §§32-1-1001 THROUGH 32-1-1007

Pursuant to §32-1-1001, MCA, the term "foreign trust company" includes each banking and trust association or corporation organized under the laws of any state other than Montana that has the power to act as trustee, guardian, or conservator and each national banking association that maintains its principal office in any state other than Montana that has been granted permission by the comptroller of the currency to act in a fiduciary capacity under the provisions of 12 U.S.C. 92a, as amended.

A letter of notification or intent addressed to the Montana Division of Banking & Financial Institutions, 301 So. Park Ave., Suite 316, PO Box 200546, Helena, MT 59620-0546 together with the following items are required of fiduciary foreign trust companies prior to and as a condition of accepting an appointment in Montana to act as trustee, guardian or conservator, executor of a will, or as guardian or conservator in ancillary proceedings, all under the circumstances described in §32-1-1002, MCA.

1. Evidence of incorporation as a trust company in the state of its principal place of business. Evidence may be in the form of a copy of the certificate of incorporation or a link to the filed certificate.
2. Evidence of reciprocity, i.e., that a banking or trust association or corporation organized under the laws of this state or a national banking association that maintains its principal offices in this state are permitted to act as trustees, guardians, or conservators in the state in which the foreign trust company maintains its principal office. Evidence may be in the form of a state statute or other evidence satisfactory to the Division of Banking & Financial Institutions
3. Evidence that the entity is permitted to act as trustees, guardians or conservators in the state in which the foreign trust company maintains its principal office pursuant to §32-1-1002, MCA. Evidence may be in the form of a state statute in the state where the foreign trust company maintains its principal office, regulator verification, or other proof satisfactory to the Division of Banking & Financial Institutions.
4. Evidence of the appointment of the Montana Secretary of State as attorney for the service of legal process pursuant to §32-1-1003, MCA.
5. Evidence of filing of a surety bond with a court of competent jurisdiction in an amount that the court directs, or evidence that capital stock of the foreign trust company is fully paid in cash, on deposit with an appropriate bank, and is of a sufficient amount to meet the requirements of Admin. R. Mont. 2.60.303(1)(a),(b),(d) and 2.60.305 pursuant to §§ 32-1-1005 and 32-1-307, MCA.

***Effective October 1, 2013:*** 5. Evidence of filing of a surety bond with a court of competent jurisdiction in an amount that the court directs, or evidence that capital stock of the foreign trust company is fully paid in cash, on deposit with an appropriate bank, and is of an amount that is certified sufficient by the foreign trust company's primary regulator for the foreign trust company's proposed business activities in this state pursuant to § 32-1-1005, MCA.

## FOREIGN TRUST COMPANIES STATUTES

**32-1-1001. Definition of foreign trust company.** (1) For the purposes of this part, the term "foreign trust company" includes each banking and trust association or corporation organized under the laws of any state other than Montana that has the power to act as trustee, guardian, or conservator and each national banking association that maintains its principal office in any state other than Montana that has been granted permission by the comptroller of the currency to act in a fiduciary capacity under the provisions of 12 U.S.C. 92a, as amended.

(2) A foreign trust company acting pursuant to this part is not a foreign corporation regulated by [32-1-402](#).

**32-1-1002. Appointment of foreign trust companies.** (1) A foreign trust company from a state offering reciprocity, as provided in subsection (2), may accept an appointment and act as:

(a) the trustee of any trust created by will, indenture, or other instrument by a person residing in this state, a corporation with its principal offices in this state, or a political entity located in this state;

(b) a guardian or conservator of the person, estate, or both person and estate of any resident of this state;

(c) an executor of the will or administrator of the estate of a decedent who was a resident of the state in which the foreign trust company maintains its principal office at the time of death, in ancillary probate proceedings in this state; and

(d) a guardian or conservator in ancillary proceedings in this state with respect to the property of a resident of the state in which the foreign trust company maintains its principal office.

(2) A foreign trust company may accept appointments in this state if banking or trust associations or corporations organized under the laws of this state or national banking associations that maintain their principal offices in this state are permitted to act as trustees, guardians, or conservators in the state in which the foreign trust company maintains its principal office.

**32-1-1003. Designation of attorney for service of process.** Before accepting an appointment or acting as a trustee, guardian, or conservator, a foreign trust company shall appoint the secretary of state as its attorney for the service of all legal process in any action or proceedings involving any acts or defaults by it as trustee, guardian, or conservator. The appointment is irrevocable. Service upon the secretary of state as attorney is as valid and binding as if personal service were made upon the foreign trust company.

**32-1-1005. Bond (2011).** Before accepting an appointment or acting as a trustee, guardian, or conservator, a foreign trust company shall file a bond with a court of competent jurisdiction in an amount as the court directs, with sufficient sureties, conditioned on the faithful discharge of its duties as trustee, guardian, or conservator. In lieu of the bond, the foreign trust company shall certify, in a manner acceptable to the department of administration, that the capital stock of the foreign trust company is fully paid in cash, on deposit with an appropriate bank, and is of a sufficient amount to meet the requirements of [32-1-307](#) for a trust company organized under the laws of this state. The deposit must be maintained until the foreign trust company ceases to act as trustee, guardian, or conservator under this part. A foreign trust company is not required to file a bond or certify the deposit of its capital with respect to a trust, created other than a trust created by a will, if the trust instrument requests or directs that a bond is not required of the trustee.

**32-1-1005. Bond (Effective Oct 1, 2013 - Senate Bill 62).** *Before accepting an appointment or acting as a trustee, guardian, or conservator, a foreign trust company shall file a bond with a court of competent jurisdiction in an amount as the court directs, with sufficient sureties, conditioned on the*

*faithful discharge of its duties as trustee, guardian, or conservator. In lieu of the bond, the foreign trust company shall certify, in a manner acceptable to the department of administration, that the capital stock of the foreign trust company is fully paid in cash, on deposit with an appropriate bank, and is of a sufficient amount to meet the requirements of [32-1-307](#) for a of an amount that is certified sufficient by the foreign trust company's primary regulator for the foreign trust company's proposed business activities in ~~company organized under the laws of~~ this state. The deposit must be maintained until the foreign trust company ceases to act as trustee, guardian, or conservator under this part. A foreign trust company is not required to file a bond or certify the deposit of its capital with respect to a trust, ~~created~~ other than a trust created by a will, if the trust instrument requests or directs that a bond is not required of the trustee.*